

18  
NO. 773  
.....

FILED  
DEC 21 1944

CHARLES ELMORE DROPLIN  
CLERK

**Supreme Court of the United States**  
(OCTOBER TERM, 1944).

OILS, Inc., an Oklahoma corporation,  
*Petitioner,*

V E R S U S

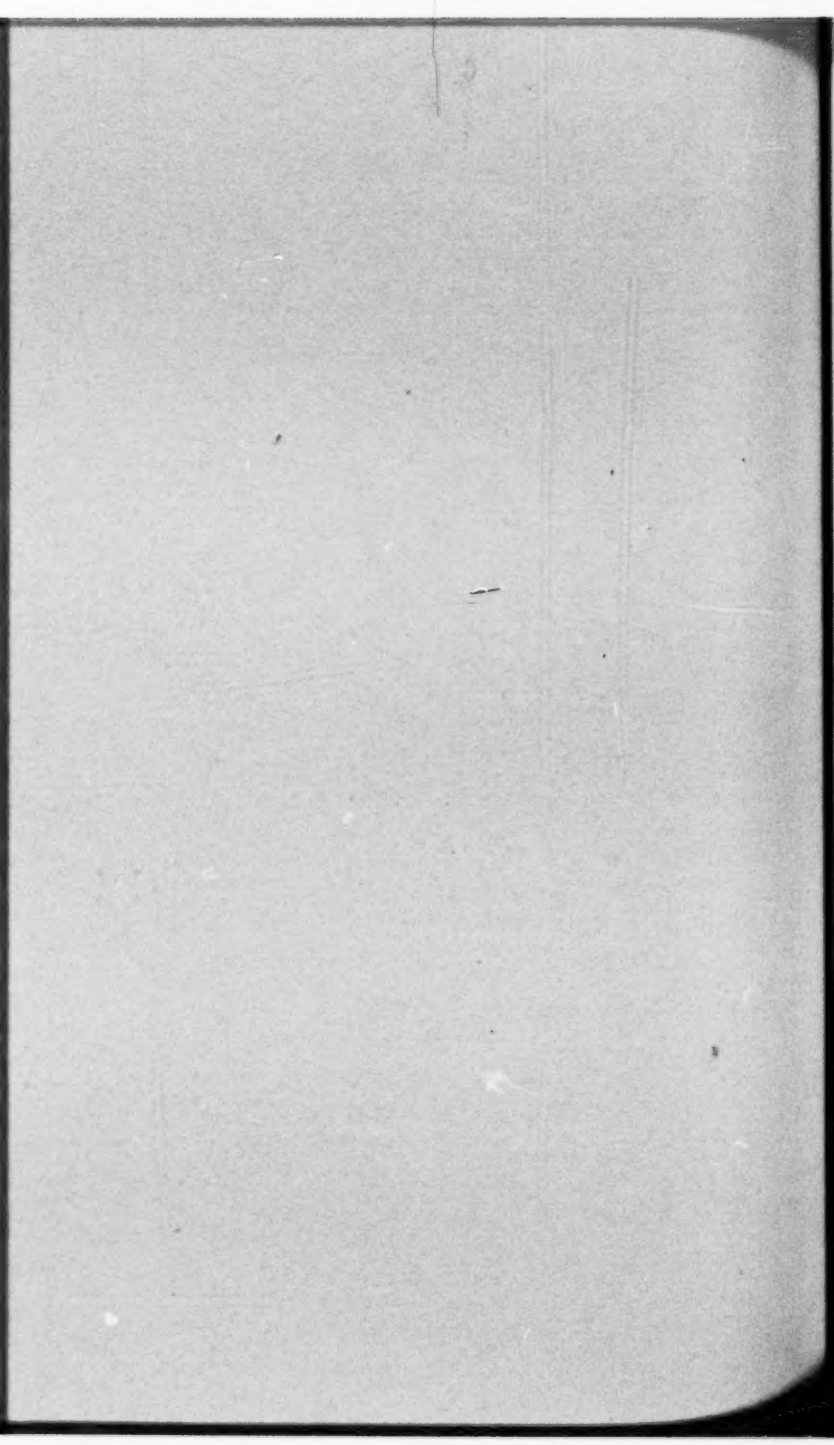
G. T. BLANKENSHIP; DAISY O. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,  
*Respondents.*

**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE TENTH CIRCUIT,  
AND SUPPORTING BRIEF**

HAL WHITTEN,  
1030 Hightower Building,  
Oklahoma City, Oklahoma,  
*Attorney for Petitioner, Oils, Inc.*

WHITTEN & WHITTEN,  
*Of Counsel.*

December, 1944.



# INDEX

---

	Page
Petition for Writ of Certiorari.....	1
II. Decisions Below .....	6
III. Jurisdiction .....	6
IV. Questions Presented .....	6
V. Reasons Relied Upon for the Allowance of the Writ.....	7
Brief in Support of Petition.....	9
Opinions .....	9
Jurisdiction .....	9
Statement of the Case.....	10
Specifications of Error.....	12
Summary of Argument.....	13
Argument .....	14
<div style="display: flex; justify-content: space-between;"> <div> <p>Point 1. A new bill filed by order of the court in an equity case, continuing the subject-matter of the parent action to recover the res involved in the original case, joining new parties defendant, and over which latter bill the court retains jurisdiction, is an ancillary action, deriving its jurisdictional features from the parent case, and diversity of citizenship is not required.....</p> <p>Point II. Ancillary Jurisdiction extends to the subject-matter irrespective of possession of the physical property. ....</p> <p>Point III. The decision of the Circuit Court is contrary to the decisions of the United States Supreme Court. ....</p> </div> <div style="text-align: right; vertical-align: bottom;"> <p>14</p> <p>20</p> <p>21</p> </div> </div>	

# CASES CITED

Alexander v. Hillman, 296 U. S. 222, 80 L. Ed. 192, 56 Sup. Ct. 204.....	18, 19
Central Union Trust Company of New York v. Anderson County, Texas et al., 268 U. S. 93, 69 L. Ed. 862 (So. Dist. Texas).....	15, 20
Cincinnati, Indianapolis & Western Ry. Co. v. Indianapolis Union Railway Co., 70 L. Ed. 490, 270 U. S. 107 (1926 Ohio).....	20
Dugas v. American Surety Co. (1937), 300 U. S. 414, 421, 57 Sup. Ct. 515, 81 L. Ed. 720.....	20
Freeman v. Howe (1860), 65 U. S. 450 (24 How.), 16 L. Ed. 749.....	15
Hume v. City of New York (1918 C. C. A. 2), 255 Fed. 488, certiorari denied, 249 U. S. 603, 63 L. Ed. 797	15
Pell et al. v. McCabe et al., 256 Fed. 512 (C. C. A. 2, 1919, N. Y.), 168 C. C. A. 18, 254 Fed. 356, 250 U. S. 573, 63 L. Ed. 1147.....	20
State of Oklahoma v. State of Texas, 258 U. S. 574, 66 L. Ed. 771, 52 Sup. Ct. 406 (1922).....	15
White v. Ewing, 159 U. S. 36, 15 Sup. Ct. 1018, 40 L. Ed. 67 .....	15

# STATUTES CITED

Judicial Code, Sec. 240(a) as amended by Act of February 13, 1925, 43 Stat. 938, 28 USCA, 347(a)	6, 9
--	------

Supreme Court of the United States  
(OCTOBER TERM, 1944).

---

NO. . . . .

---

OILS, INC., an Oklahoma corporation,  
*Petitioner,*

V E R S U S

G. T. BLANKENSHIP; DAISY O. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,  
*Respondents.*

---

**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE TENTH CIRCUIT,  
AND SUPPORTING BRIEF**

---

This action is the outgrowth of the decree and orders rendered in the class action of *Hopler et al. v. Farmers Mutual Royalty Syndicate, Inc.*, and *Oils, Inc. et al.*, No. 461 Civil, in the United States District Court for the Western District of Oklahoma.

That action is a class action in equity by eight minority stockholders of the Farmers Mutual Royalty Syndicate, Inc. (hereinafter referred to as "Farmers Mututal"), filed against the parent corporation, Farmers Mutual, the subsidiary corporation, Oils, Inc. (hereinfater referred to as "Oils"), and the officers of these corporations individually.

The action had for its purpose the recovery of assets wrongfully taken by the corporate officers; the re-establishing of those assets in the corporations, and the removal of the corporate officers.

The action resulted in a decree favorable to the petitioners directing the return of corporate properties, rendering judgments against certain corporate officers, and further directing the reorganization of the corporations' officials (R. 30-40). Part of the results were accomplished by the decree in No. 461. The election of new officers was accomplished by a receiver appointed by the court for that purpose, whose office was terminated by order of the court upon the completion of the reorganization of the boards of directors (R. 44-45).

At all times since the filing of the parent case, No. 461, the trial court in that action has specifically retained jurisdiction of the subject-matter of that case by its decrees and orders (Decree, R. 40; Order, R. 44-45).

During the process of hearing evidence on the principal issues in Case No. 461, facts not available to the petitioners at the time of the commencement of the trial of that case, involved other corporate officers of the two

corporations, who had previously resigned, and were not at that time members of the official families; and involving also additional new corporations controlled by those former officers (R. Decree 38-39).

The trial judge, Bower Broaddus, directed the receiver to make investigation of the additional facts developed during the trial of Case 461, and to present the results of the investigation to the court for its direction (R. 38).

Upon the presentation of the receiver's report, trial judge, Bower Broaddus, ordered this present action commenced under the style of "*F. M. Petree, Receiver of Farmers Mutual Royalty Syndicate, Inc., and Oils, Inc. v. G. T. Blankenship et al.*, No. 1181 Civil," as an ancillary action in the same court in which the principal action was, and still is, pending (R. 41-42).

At no time were the corporations insolvent, and the receiver was in office for the primary purpose of reorganization of the corporate officers.

When the receiver had completed the reorganization of the corporate officers by conducting stockholders' meetings, he made his report and was discharged. The trial judge in the parent action specifically retained jurisdiction of these proceedings filed by the receiver in accordance with the orders and decree in the parent action (R. 44-45).

The new officers and directors serving under the power and control of the trial court in No. 461 are still subject to that court's orders, control or removal (R. 44-45).

Honorable Bower Broadus is the roving judge for the United States District Courts in Oklahoma. His docket was heavily burdened and an additional judge was provided by Congress for the Western District of Oklahoma.

Upon the appointment of that judge, the Honorable Stephen S. Chandler, this present ancillary case was transferred to the docket of the Honorable Judge Chandler.

Judge Broadus still retains jurisdiction in the parent case, No. 461, passing on the continuing processes in that case.

The proceedings in Case 461, *Hopler et al. v. Farmers Mutual and Oils et al.*, were by reference made a part of the present action, *Oils, Inc. v. Blankenship et al.*, No. 1181. This case against the former officers and their companies, involves the same frauds and properties referred to in the subject-matter of the petition and decrees in 461 (R. 2-14, R. 38-39).

Upon the termination of the office of receivership, but with continuing control retained by Judge Broadus in Case No. 461, the name of the receiver was stricken from the petitioners named in the present action, No. 1181 (R. 17).

The new defendants then challenged the jurisdiction of the trial court to proceed in the present action on the



grounds of lack of diversity of citizenship, Oils being an Oklahoma corporation. Trial Judge Chandler dismissed the case, holding that the jurisdiction had been lost upon the termination of the receivership (R. 45).

Oils appealed to the Tenth Circuit Court and submitted that the trial court in the parent case does not lose jurisdiction of the subject-matter or nullify its decrees and orders, by terminating the office of the receiver, temporarily installed to accomplish part of the court's process where the court in the parent case retains jurisdiction and proceeds by other means to effect the results provided for by that court's orders and decrees in collecting the properties of the stockholders in the parent action.

The Circuit Court of Appeals for the Tenth Circuit held contrary (R. 49-53).

## **II. DECISIONS BELOW**

The trial court in Case 1181 dismissed that action for want of jurisdiction upon the 22nd day of November, 1943 (R. 45). The opinion of the Tenth Circuit Court of Appeals was filed October 25, 1944 (R. 49-53), and has not yet been officially reported. Mandate was stayed in the Circuit Court November 27, 1944, for thirty days (R. 45).

## **III. JURISDICTION**

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 USCA, Sec. 347(a).

## **IV. QUESTIONS PRESENTED**

(1) Did the trial court in the parent action lose jurisdiction of the subject-matter, and its power to enforce its orders and decrees in an ancillary action, commenced under the orders and directions of the trial court in the parent action, and over which the judge in the parent case specifically retained jurisdiction, by ceasing to act through a receiver and by continuing to enforce its judgments and decrees through corporate officers acting under the orders and directions of the court in the parent case?

(2) Is a federal court of equity limited to acting through a receiver in the process of recovering properties

while enforcing the court's equity decrees in an ancillary action, brought to complete the relief provided in the parent case decrees?

**V. REASONS RELIED UPON FOR THE  
ALLOWANCE OF THE WRIT**

The reason for the allowance of the writ of certiorari is as follows:

(1) The Circuit Court of Appeals has decided an important question of federal equity jurisdiction contrary to the decisions of the United States Supreme Court.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Tenth Circuit should be granted.

HAL WHITTEN,  
1030 Hightower Building,  
Oklahoma City, Oklahoma,  
*Attorney for Petitioner, Oils, Inc.*

WHITTEN & WHITTEN,  
*Of Counsel.*

CERTIFICATE

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court, and that it is not for the purpose of delay.

  
Attorney for Petitioner.

Dated: Oklahoma City, Oklahoma,  
December <sup>14</sup>~~7~~, 1944.





## **BRIEF IN SUPPORT OF PETITION**

### **O P I N I O N S**

The trial court in Case No. 1181 dismissed that action for want of jurisdiction upon the 22nd day of November, 1943 (R. 45). The opinion of the Circuit Court of Appeals was filed October 25, 1944 (R. 49-53) and has not yet been officially reported. Mandate was stayed in the Circuit Court for thirty days (R. 54) by order made on November 27, 1944.

### **J U R I S D I C T I O N**

Plaintiff seeks review, by certiorari, of the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, of October 25, 1944, under provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, 28 [USCA, 347(a)].

### STATEMENT OF THE CASE

The jurisdiction of the federal court in the parent case No. 461, is unquestioned by reason of diversity of citizenship, and the amount in value exceeded \$3,000.00.

The dismissal of the receiver in the parent case was held to effect a release of the subject-matter and thereby a termination of the court's jurisdiction in the ancillary action brought under the court's direction in the same court, by reason of lack of diversity of citizenship in the latter action. The trial court in the parent action, No. 461, sought to enforce its relief vitalizing its judgment therein by the present ancillary action, and at no time has released jurisdiction or discharged the purposes of its decrees and orders in either case, as reflected by the following quotations from the orders and decrees in the parent case.

From the original decree:

"It appearing from the evidence in this cause, and the findings of fact and conclusions of law of the Court based thereon, there are certain instances where persons who are not parties to this action may be liable for the improper administration of the affairs of the Farmers Mutual Royalty Syndicate, Inc., and Oils, Inc., and who are not bound by the findings herein. The Court, therefore, suggests to the Receiver that an investigation be made of such facts and where justified that application be made to this Court for permission to institute suit for proper relief" (R. 38).



It also ordered

“\* \* \* that the Court retain jurisdiction of this cause for the purpose of enforcing this decree and the administration of the property by the receiver of the Farmers Mutual \* \* \* and \* \* \* Oils \* \* \*; and for such accounting as will be necessary between the parties hereto, \* \* \*” (R. 40).

From the Findings and Order Transferring Operations to the Board of Directors,

“\* \* \* the court finds that the change should be made subject to this Court retaining jurisdiction for the purpose of carrying out and enforcing all orders, judgments and decrees heretofore made and entered herein, \* \* \*”

and orders that,

“\* \* \* this Court retains jurisdiction in the above styled cause, and ancillary proceedings thereto for the purpose of enforcing and carrying into effect the orders, judgments and decrees of this Court heretofore issued and filed herein, \* \* \*”

and further orders,

“\* \* \* that the respective boards of directors of Farmers Mutual Royalty Syndicate, Inc., and Oils, Inc., shall make semi-annual reports to this Court of their acts in accordance herewith, and with the previous orders and judgments herein” (R. 44-45).

All other important features of the controversy are contained in the statement of the foregoing petition, and are adopted here.

### **SPECIFICATIONS OF ERROR**

(1) The Circuit Court of Appeals erred in holding that the dismissal of the receiver, appointed over solvent corporations, terminated the jurisdiction of the equity court where that court specifically retained jurisdiction of the ancillary actions, and continued to enforce its decrees controlling the subject-matter in the parent case, through a board of directors held answerable and subject to the directions of the equity court in the parent action.

(2) The Circuit Court of Appeals erred in holding that the physical possession of corporate properties by a receiver was essential to the equity court retaining jurisdiction in the principal case and ancillary action to it, where the equity court uses other means within its power to enforce its decrees.

(3) The Circuit Court of Appeals erred in adopting the position that property taken possession of by the court's receiver constituted the entire *res* and subject-matter of the parent case.

## **SUMMARY OF ARGUMENT**

### ***Point I.***

A new bill filed by order of the court in an equity case, continuing the subject-matter of the parent action to recover the *res* involved in the original case, joining new parties defendant, and over which latter bill the court retains jurisdiction, is an ancillary action, deriving its jurisdictional features from the parent case, and diversity of citizenship is not required.

### ***Point II.***

Ancillary jurisdiction extends to the subject-matter irrespective of the physical possession of the *res*.

### ***Point III.***

The opinion of the Circuit Court is contrary to the decisions of the United States Supreme Court.

## ARGUMENT

### *Point I.*

A new bill filed by order of the court in an equity case, continuing the subject-matter of the parent action to recover the *res* involved in the original case, joining new parties defendant, and over which latter bill the court retains jurisdiction, is an ancillary action, deriving its jurisdictional features from the parent case, and diversity of citizenship is not required.

The decision of the Circuit Court of Appeals determined the question of jurisdiction in the ancillary action No. 1181, upon the effect of transferring the proceedings from the receiver to the corporate board of directors (R. 53).

According to the Circuit Court this transfer removed from the court in the parent case the custody "and control of the properties and assets in the main proceedings," and that the effect of the transfer was to terminate the court's jurisdiction of the subject-matter in the parent case, thereby depriving the ancillary case of its parent, with the resultant loss of jurisdiction for lack of diversity.

The Circuit Court of Appeals, in so holding, adopted the position that the physical possession of the property and its control by the court, through its receiver, was the determining factor of jurisdiction.

It is the position of the appellant here that the jurisdiction of the federal court in ancillary matters is not deter-

mined upon the control of a part of the property, but of all of the *res* of the subject-matter of the parent case.

It is the subject-matter of the parent case in all of its ramifications that the court of equity has jurisdiction over. And it is the control of the subject-matter in the parent case that sustains the jurisdiction of a court of equity in all ancillary proceedings.\*

In order to properly determine whether Case 1181 was a continuation of the equity process of the court in 461, it is necessary to ascertain what the subject-matter and *res* of the parent case was, and then to determine whether the ancillary action involves that *res* or subject-matter.

The petition in the original case sets out as the non-resident plaintiffs, the stockholders of the Farmers Mutual. The defendants were the parent company, the Farmers Mutual, its subsidiary corporation, Oils, and their officers. The relief prayed for by these stockholders, for themselves and their class, was in substance to recover their properties wrongfully taken by the corporate officers, and to re-establish in the nominally named corporate defendants, Farmers Mutual and Oils, that property, along with the changing of the boards of directors from dishonest to honest men (R. 20-29).

---

\***Freeman v. Howe** (1860), 65 U. S. 450 (24 How.), 16 L. Ed. 749; **Hume v. City of New York** (1918 C. C. A. 2), 255 Fed. 488, certiorari denied, 249 U. S. 603, 63 L. Ed. 797; **Central Union Trust Company of New York v. Anderson County, Texas et al.**, 268 U. S. 93, 69 L. Ed. 862 (So. Dist. Texas); **White v. Ewing**, 159 U. S. 36, 15 Sup. Ct. 1018, 40 L. Ed. 67; **State of Oklahoma v. State of Texas**, 258 U. S. 574, 66 L. Ed. 771, 52 Sup. Ct. 406 (1922).

The *res* in Case 461 thereby consisted of all properties then in the possession of the Farmers Mutual and Oils, coupled with all properties that under equity, should be in the possession of those corporations. The *res*, therefore, was both that property over which trial court Judge Broaddus took immediate possession through his receiver, and that property that should have been in the possession of those corporations, for the benefit of the stockholders, and which was held by those not parties to the principal action, but who were made parties, by the trial court in exercising its equity ancillary jurisdiction in Case No. 1181.

A reading of the petition in 461, with the decree of the court therein, with particular attention to part three thereof, establishes the properties, and frauds affecting them, over which the equity court was exercising jurisdiction (R. 20-29, 30-40).

Within the arms of its processes in the parent case, the equity court did not have jurisdiction of those additional parties, both corporate and individual, they not having been sued at the commencement of the original case. These persons and their present controlled corporations, now joined in the ancillary action, are those persons referred to by Trial Judge Broaddus, in the parent case, under part three of his decree (R. 38). The properties and frauds involved in 1181 are those same properties and frauds involved in Case 461, and specifically referred to by the trial judge in his decree.

A reading of the petition in 1181 demonstrates the parallel issues of the ancillary action to the issues in the parent action (R. 2-14).

The ancillary action is a continuation of the arm of the equity court to enforce the relief sought by the stockholders in the parent action and granted by the judge in that case.

This ancillary action could just as well have been a supplemental bill filed in the parent action. It could have been joined in the parent action by the court stopping the proceedings during the trial in the parent case and requiring the joining and serving of the additional parties involved in the ancillary bill. This the trial court did not see fit to do. The long and tedious trial affecting the thousands of properties and hundreds of transactions of the fraudulent acting corporate officers was not inviting to a recess in the proceedings in the parent case.

It was far more feasible to use the processes that Judge Broaddus used in ordering the bringing of this ancillary bill.

Let the Court not forget that the corporate defendants were not insolvent. The receiver performed his services and then, for the sake of economy to the corporations, with resultant benefit to the stockholders, the equity court altered its method of pursuing the *res*, and by its orders substituted the boards of directors over which the court retained its control (R. 44-45).

As stated in the case of *Alexander v. Hillman*, 296 U. S. 222, 80 L. Ed. 192, 56 Sup. Ct. 204, referring to the equity courts:

"Their established forms being flexible, courts of equity may adapt proceedings, and remedies to the circumstances of cases and may formulate them to safeguard, adjudge and enforce the rights of all parties."

The subject-matter of the ancillary action is no new wrong and involves no additional properties to that which were involved in the parent case, and which would have been disposed of therein had the defendants in the present action been sued in the parent case.

The effect of the Circuit Court of Appeals opinion was to chop off the arm of the equity court in pursuing the property and the subject-matter of the original case. This was held to be effected by the discharge of the receiver, even though the trial court specifically retained jurisdiction of the ancillary action and retained control of all of those matters included in the court's original decree and its subsequent orders.

It was not the appointment of the receiver in the parent case, or the retaining of the receiver with his powers, that gave the trial court its jurisdiction in that action. It was the subject-matter and the *res* involved in that parent action, over which the court had jurisdiction.

Oils was a defendant in that case. The petitioners were non-residents and the ancillary action, derived its



jurisdictional elements from the parent case. The jurisdiction in the ancillary action exists, with or without a receiver, so long as the court is in the process of enforcing its decrees and securing the property or rights over which it had assumed jurisdiction.

It was a continuation of the subject-matter of the original action and, as stated in *Alexander v. Hillman*, *supra*:

"Nothing is more clearly a part of the subject-matter of the main suit than the recovery of all that to the *res* belongs."

And, as in the *Alexander v. Hillman* case, the judge here in the parent action is pursuing, in the ancillary case, the *res* that is the subject-matter of the parent action.

The effect of the Circuit Court of Appeals opinion is to separate the case of Oils, and that of Farmers Mutual, the latter being a non-resident and entitled to federal jurisdiction, even though the controversies involving the defendants in the ancillary action concern both corporations jointly.

The decree, in effect, stops Judge Broadbuss in the completion of the avowed purposes of his decrees to re-establish in the corporate entities their properties to be held by them for the benefit of their stockholders.

The effect of the decree is to force the continuation of the receivership, unnecessary and expensive, only for the purpose of retaining jurisdiction.

This we submit is not required by a court of equity to accomplish and effectuate its decrees. Physical possession of property in itself is not prerequisite to the equity court's jurisdiction.\*

### ***Point II.***

**Ancillary Jurisdiction extends to the subject-matter irrespective of possession of the physical property.**

The physical possession of the property is not the determining point of the court's jurisdiction in an ancillary action. So long as the *res* involved in the principal case is the subject-matter of the ancillary bill, the court of equity has ancillary jurisdiction.

This is true even though the possession of the property itself is no longer in the court. If the subject-matter of the ancillary bill, even though involving strangers to the principal suit, has relation to that property over which the court has exercised jurisdiction or seeks to exercise jurisdiction, diversity of citizenship is not required. *Central Union Trust Company of New York v. Anderson County Texas et al.*, 258 U. S. 93, 69 L. Ed. 862 (So. Dist. Texas).

---

\**Dugas v. American Surety Co.* (1937), 300 U. S. 414, 421, 57 Sup. Ct. 515, 81 L. Ed. 720; *Pell et al. v. McCabe et al.*, 256 Fed. 512 (C. C. A. 2, 1919, N. Y.), 168 C. C. A. 18, 254 Fed. 356, 250 U. S. 573, 63 L. Ed. 1147; *Cincinnati, Indianapolis & Western Ry. Co. v. Indianapolis Union Railway Co.*, 70 L. Ed. 490, 270 U. S. 107 (1926 Ohio).

To permit the decision of the Circuit Court to stand is depriving the equity arm of the federal district court of its power to recover the property which is the *res* and subject-matter of the case over which it has jurisdiction. It deprives the court of its power to enforce its decrees.

***Point III.***

**The decision of the Circuit Court is contrary to the decisions of the United States Supreme Court.**

The decision of the Circuit Court of Appeals is contrary to the cases decided by the United States Supreme Court and cited herein.

Respectfully submitted,

HAL WHITTEN,  
1030 Hightower Building,  
Oklahoma City, Oklahoma,  
*Attorney for Petitioner, Oils, Inc.*

WHITTEN & WHITTEN,  
*Of Counsel.*

December, 1944.



19  
FILED

JAN 15 1945

CHARLES ELMORE CROPLEY  
CLERK

**In the  
Supreme Court of the United States**

**No. 773**

**OILS, INC., an Oklahoma Corporation,  
*Petitioner,***

**VERSUS**

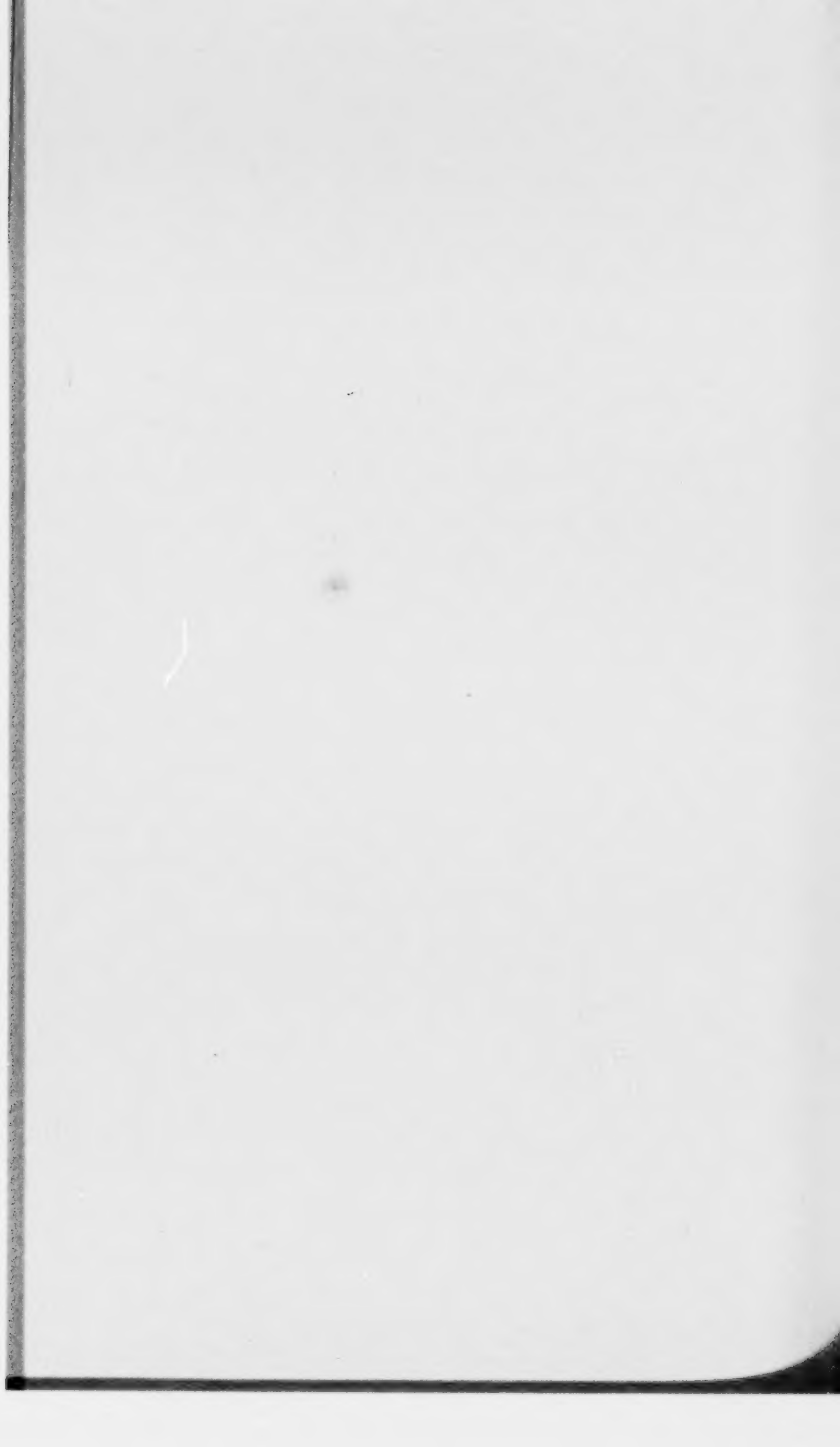
**G. T. BLANKENSHIP; DAISY D. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,**

***Respondents.***

**ANSWER BRIEF OF RESPONDENT, M. E. TRAPP**

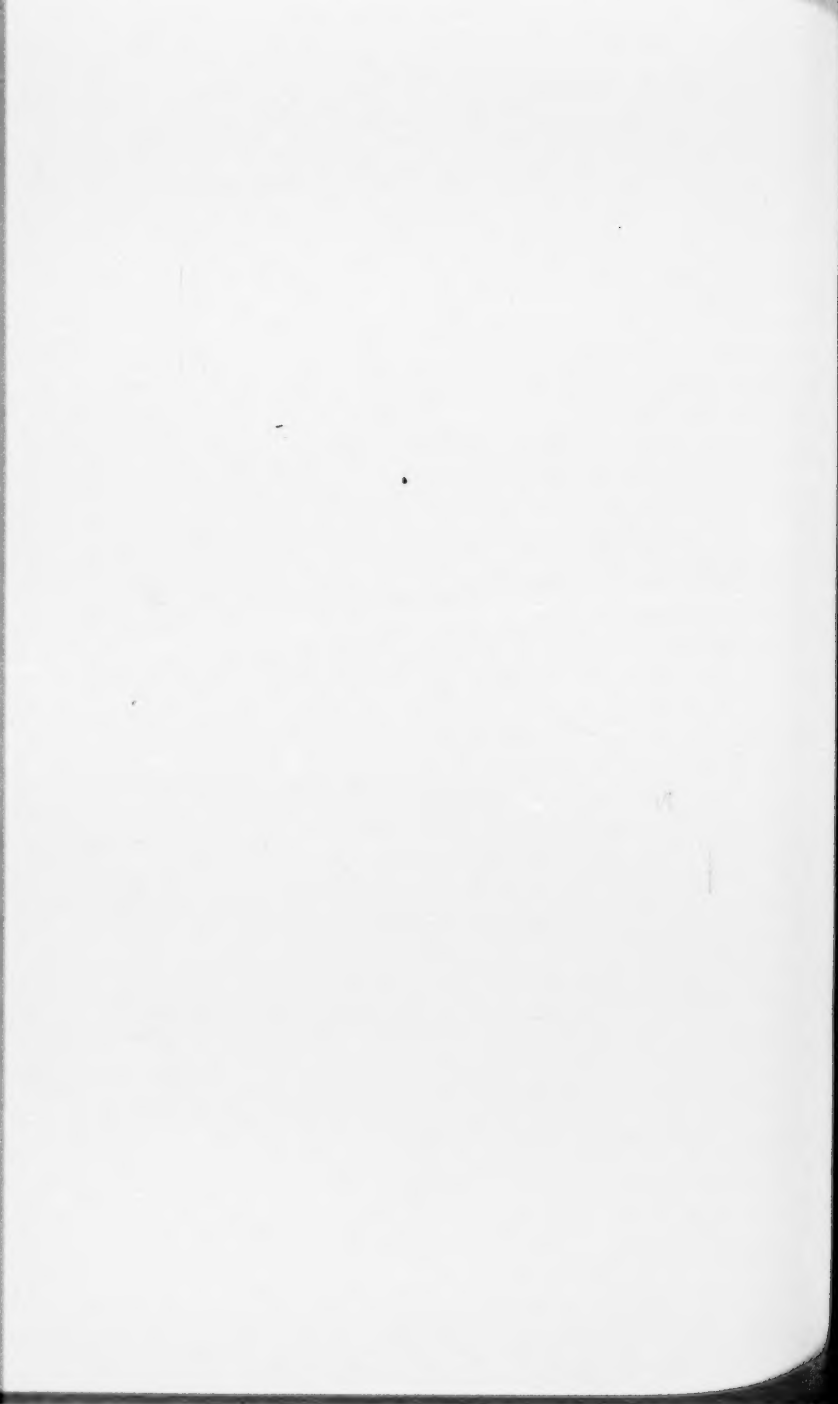
**RAM MORRISON,  
1816 Petroleum Building,  
Oklahoma City, Oklahoma,  
*Attorney for Respondent,*  
M. E. TRAPP.**

**January, 1945.**



# TABLE OF CASES

	PAGE
Barnett v. Mayes, 43 F. (2d) 521	3
Cabaniss v. Reco Min. Co., 116 F. 318	5
Cincinnati, etc. R. Co. v. Indianapolis, etc. R. Co., 270 U. S. 106, 70 L. ed. 490	3
Comer v. Felton, 22 U. S. App. 313, 61 F. 731	4
Converse-Hough & Co., Inc., In re., 27 F. (2d) 368	5
Fulton National Bank of Atlanta v. Hozier et al., Receivers, 267 U. S. 276, 54 S. Ct. 261, 69 L. ed. 609	2
Green-Boots Cons. Co. v. Hays, 56 F. (2d) 829	4
Hoffman v. McClelland, 264 U. S. 552, 62 L. ed. 845, 44 S. Ct. Rep. 407	3
Hook v. Bosworth, 24 U. S. App. 341, 64 F. 443	4
Johnson v. Thomas, 16 F. Supp. 1019	5
Julian v. Central Trust Co., 193 U. S. 93, 48 L. ed. 629, 24 S. Ct. Rep. 399	3
Milwaukee etc. Co. v. Milwaukee St. P. R. Co., 2 Wall. 609, 17 L. ed. 886	3
Morgan's etc. R. Co. v. Texas Cent. Ry. Co., 137 U. S. 171	3
Murphy v. Hoffman Co., 211 U. S. 562	3
Rockwood v. Foshay, 6 F. (2d) 625	4
Sullivan v. Colby, 34 U. S. App. 432, 71 F. 460	4
Union Guardian Trust Co. v. Detroit Trust Co., 72 F. (2d) 120	4
Volland, In re., 83 F. (2d) 680	5
Wabash R. Co. v. Adelbert College, 208 U. S. 38, 52 L. ed. 379, 28 S. Ct. Rep. 182	3
White v. Ewing, 159 U. S. 36	4
Black's Law Dictionary	2
Clark on Receivers (2nd. Ed) p. 797, par. 584	4
84 Cyc. p. 213	4
Smith on Receivers (2nd. Ed.) Sec. 54, p. 227	4





In the  
Supreme Court of the United States

---

No. 773

---

OILS, INC., an Oklahoma Corporation,  
*Petitioner,*

V E R S U S

G. T. BLANKENSHIP; DAISY D. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,

*Respondents.*

---

**ANSWER BRIEF OF RESPONDENT, M. E. TRAPP**

---

The Circuit Court in its opinion has stated the facts and the issues clearly and succinctly. There is little that can be added to clarify the issue before the Court.

The petitioner, in his statement of the case and his Specification of Error, also in his argument, continues to use

legal terms that have both a general and a specific meaning, thereby adding to his own confusion in discussing the issues so ably covered in the opinion of the Circuit Court.

The term "subject matter" may mean the "right of action," or it may mean the object or property involved in the action. The term "*res*" has a general and a limited meaning. The "right of action" often is called the *res*, which is a general use, but in a limited sense, the *res* is "any object of right other than the right of action." (1).

A proceeding is not ancillary to the power or jurisdiction of the court over "a right of action." The proceeding is ancillary only to the power or jurisdiction of the Court, exercised in direct relation to property, or assets actually or constructively drawn into the Court's possession or control by the principal suit. No proceeding is ancillary, except where it has a direct relation to "an object of right other than the right of action" actually or constructively drawn into the Court's possession or control by the principal suit. (2).

The Circuit Court in its opinion clearly recited the rule that:

"The test of whether a suit is ancillary is whether it has direct relation to property or assets actually or constructively drawn into the court's possession or control by the principal suit."

There are three categories of recognized ancillary jurisdiction:

---

(1) Blacks Law Dictionary.

(2) Fulton National Bank of Atlanta v. Hozier, et al., Receivers, 267 U. S. 276, 54 Supreme Court 261; 69 Law Edition 609, and other cases cited by the Circuit Court in its opinion.

(1) When a "right of action" is reduced to a judgment the judgment is "an object of right other than the right of action," or a res, in a restricted sense, and the court, having jurisdiction of its judgment, can by ancillary proceedings enforce the same or protect the same by ancillary proceedings. (3).

This is not an action to enforce the judgment or decree in the principal action, Number 461. Petitioner refers to orders of the Court in the principal action and attempts to class said orders, or the directions to the Court's receiver, as judgments and decrees of the Court, in which the petitioner is in error.

(2) A Federal Court, which has taken custody or control of property in a proceedings, of which it has jurisdiction has ancillary jurisdiction of a subordinate suit or proceeding affecting such property. (4).

This is an action *ex delicto* and does not involve any property actually or constructively drawn into the Court's possession or control by the principal suit.

(3) A Federal Court, which has appointed a receiver in a proceeding of which it has jurisdiction, has

---

(3) Julian v. Central Trust Company, 193 U. S. 93, 48 Law Edition 629, 24 Supreme Court Report 399;

Milwaukee and M. E. Co. v. Milwaukee St. P. R. Co., 2 Wall 609-613, 17 Law Edition 886-895;

Wabash R. Co. v. Adelbert College, 208 U. S. 38, 52 Law Edition 379, 28 Supreme Court Report 182;

Hoffman v. McClelland, 264 U. S. 552, 62 Law Edition 845, 44 Supreme Court Report 407;

Cincinnati, Indianapolis and Western R. R. Co. v. Indianapolis Union R. R. Co., 270 U. S. 106, 70 Law Edition 490.

(4) Wabash R. R. Co. v. Adelbert College, 208 U. S. 38, 54;

Morgan's Lc. and Texas R. R. and S. S. Co. v. Texas Central Ry. Co., 137 U. S. 171, 201;

Murphy v. John Hoffman Co., 211 U. S. 562, 553;

Barnett v. Mayes, 10 Cir., 43 F. (2d) 521, 526-528;

Cited by the Circuit Court.

jurisdiction to entertain a suit or proceeding to collect or recover assets. (5).

But an action against third persons, persons not parties to the receivership action, and not officers of the court, over property or funds not in the actual or constructive possession of the court, but held adversely by said third persons, must be a plenary action. An action involving the administration of funds or property in the actual or constructive possession of the receiver, or the court, is a summary or ancillary proceedings. In determining whether the court has actual or constructive possession of the property or assets the distinction is made, upon the fact as to whether the possession or claim of third persons arose prior to or subsequent to the appointment of the receiver. If the claim and possession of said funds or property occurred prior to the appointment of the receiver, it will necessarily be a plenary action. While if said possession and ownership or claim occurred after the appointment of the receiver, it may proceed summarily by a petition for a rule to show cause in the receivership proceedings (6).

(5) *White v. Ewing* 159 U. S. 36, 38, 39;

*Green-Boots Constr. Co. v. Hays*, 10 Cir., 56 F. (2d) 829, 830;

*Goldman v. Staten Island Nat. Bank & Trust Co.*, 2 Cir., 98 F. (2d) 496, 497;

*Union Guardian Trust Co. v. Detroit Trust Co.*, 6 Cir., 72 F. (2d) 120, 121;

*Rockwood v. Fashay*, 8 Cir., 6 F. (2d) 625, 627.

Cited by the Circuit Court.

(6) *Smith on Receivers*, Second Edition, Section 54, page 227;

*Clark on Receivers*, Second Edition, page 797, par. 584;

*Cyc.* 84, page 213;

*Comer v. Felton*, 10 C. C. A. 28, 22 U. S. App. 313, 61 F. 731;

*Hook v. Bosworth*, 12 C. C. A. 208, 24 U. S. App. 341, 64 F. 443;

*Sullivan v. Colby* 18 C. C. A. 193, 34 U. S. App. 432, 71 F. 460.

This action is to recover against the respondent, M. E. Trapp, a money judgment and no wise could it be said that it is in direct relation to any funds or property drawn in actual or constructive possession or control of the court in the principal suit.

Further, if said action were ancillary, under this category, as soon as the original action was terminated and the receiver discharged, the ancillary proceedings would necessarily fall (7).

The rule, stated by the Circuit Court, covers all three categories since a judgment is "an object of right other than a right of action," the *res* in a restricted sense, a thing, property or asset. The petitioner, in his statement of the case or his argument, does not attempt to show that there is property or assets involved in this proceedings, over which the court in the principal action had actual or constructive possession or control. The petitioner in this cause does not allege or state facts which show that there is property or assets over which the court, in the principal suit, Number 461 Civil, had actual or constructive possession, or that this is an action to enforce, interpret or protect a judgment or decree of the court in the principal action. Therefore, the petition shows upon its face that the Court does not have juris-

---

(7) *Johnson v. Thomas*, D. C. Tex., 16 F. Supp. 1019;

*In re Volland*, 7 Cir., 83 F. (2d) 680, 681;

*In re Converse-Hough & Co., Inc.*, D. C. N. Y., 27 F. (2d) 368;

*Cabaniss v. Reco Min. Co.*, 5 Cir., 116 F. 318, 323;

Cited by Circuit Court under point number (9).

diction, and the judgment of the Circuit Court should be affirmed and the writ of *certiorari* denied.

Respectfully submitted,

RAM MORRISON,  
1816 Petroleum Building,  
Oklahoma City, Oklahoma,  
*Attorney for Respondent,*  
M. E. TRAPP.

January, 1945.

(20)  
No. 773

JAN 17 1945

CHARLES ELMORE CROPLEY  
CLERK

---

# Supreme Court of the United States

(OCTOBER, 1944, TERM)

---

OILS, Inc., an Oklahoma Corporation,  
Petitioner,

V E R S U S

G. T. BLANKENSHIP, ET AL.,  
Respondents.

---

**BRIEF OF RESPONDENTS G. T. BLANKENSHIP,  
DAISY O. BLANKENSHIP, LOU SHEPHERD, NA-  
TIONAL BOND AND MORTGAGE CO., ROYALTY  
HOLDING CO., OIL ROYALTIES, INC., AND EQUAL  
ROYALTY CO. IN OPPOSITION TO PETITION.**

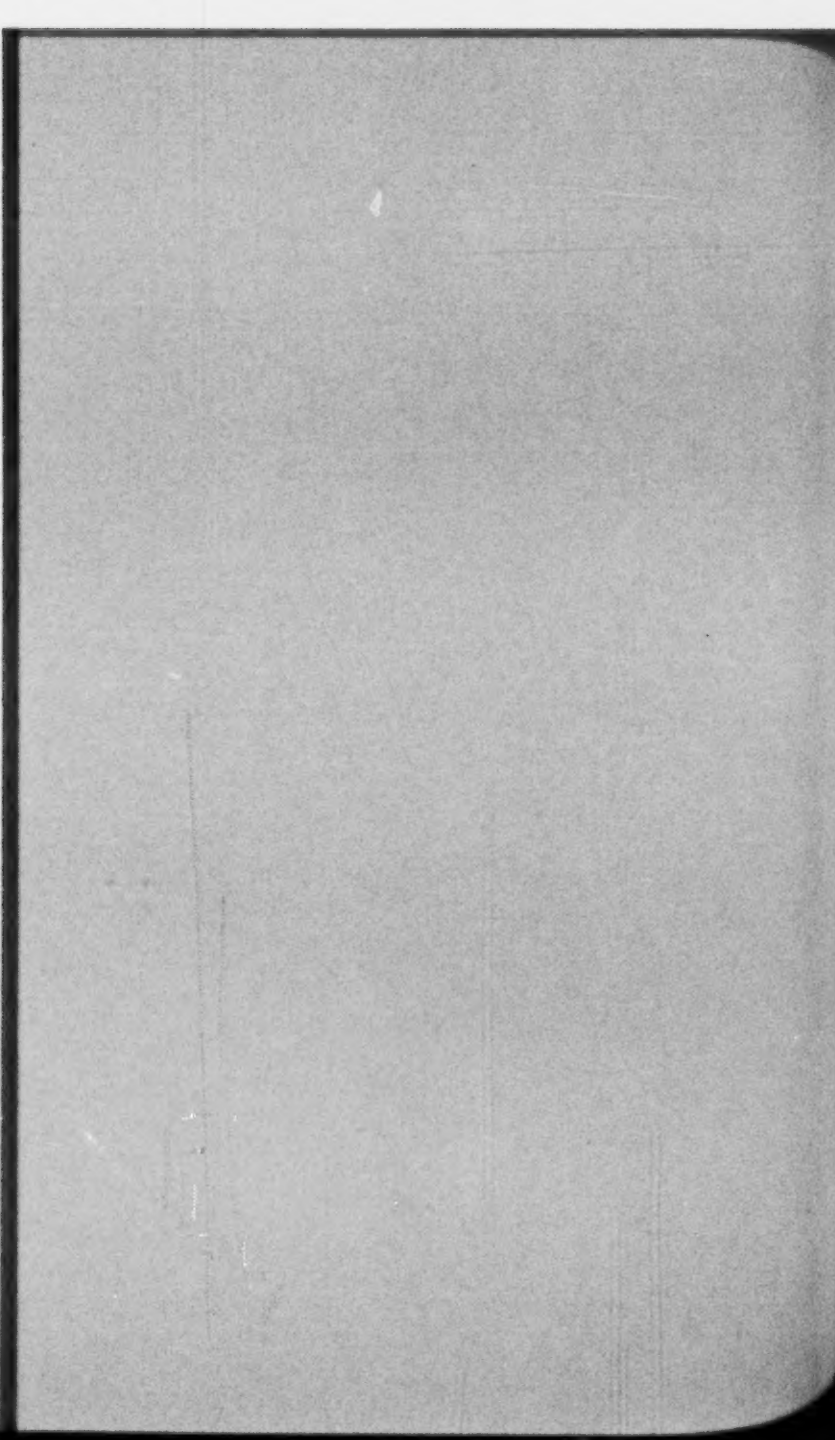
---

J. B. DUDLEY,  
1501 Apco Tower,  
Oklahoma City, Oklahoma,  
*Attorney for Respondents, G. T.  
Blankenship, Daisy O. Blanken-  
ship, Lou Shepherd, National Bond  
and Mortgage Co., Royalty Holding  
Co., Oil Royalties, Inc., and Equal  
Royalty Co.*

DUDLEY, DUVALL & DUDLEY,  
*Of Counsel.*

January, 1945.

---









# INDEX

	Page
Opinions Below .....	1
General Statement .....	2
Hopler Action, No. 461 Civil .....	2
Instant Action .....	3
Argument .....	5
Point I. Jurisdiction, dependent <del>or</del> independent, must affirmatively appear from the allegations of the complaint .....	5
Point II. The instant action when brought was a new, independent one, and the district court was without jurisdiction over the subject-matter there- of. The Order of dismissal without prejudice was proper .....	5
Point III. If the instant case was dependent when brought, the termination of the receivership, the discharge of the receiver, the return of the prop- erties of the corporations to their respective boards of directors, their substitution and the elimination of the receiver from the action terminated the de- pendent jurisdiction, and the action became an in- dependent one .....	8
Conclusion .....	9

## AUTHORITIES

Barker v. Eastman (1st Cir.), 206 Fed. 865 .....	8
Boston & Montana Consolidated Copper & Silver Min. Co. v. Montana Ore Purchasing Co., 186 U. S. 631, 47 L. Ed. 627 .....	8
Cabaniss v. Reco Min. Co. (5th Cir.), 116 Fed. 318.....	8

	Page
Campbell v. Golden Cycle Min. Co. (8th Cir.), 141 Fed. 610 . . . . .	6
Central Union Trust Co. v. Anderson County, 268 U. S. 93, 69 L. Ed. 862 . . . . .	6
Cincinnati, Indianapolis & Western R. R. Co. v. Indianapolis Union R. Co., 270 U. S. 106, 70 L. Ed. 490 . . . . .	6
Clauss v. Palmer Union Oil Co. (9th Cir.), 222 Fed. 870 . . . . .	8
Converse-Hough Co., Inc., In re, (D. C. N. Y.), 27 Fed. (2d) 368 . . . . .	8
Cooperative Transit Co. v. West Penn. Electric Co. (4th Cir.), 132 Fed. (2d) 720 . . . . .	6
Dugas v. American Surety Co., 300 U. S. 414, 81 L. Ed. 720 . . . . .	6
Fulton National Bank v. Hosier, 267 U. S. 276, 69 L. Ed. 609 . . . . .	6
Green-Boots Const. Co. v. Hays, 56 Fed. (2d) 829 . . . . .	6
Hamer v. New York Railways Co., 244 U. S. 206, 61 L. Ed. 1125 . . . . .	6
Hoffman v. McClelland, 264 U. S. 552, 68 L. Ed. 845 . . . . .	6
Indianapolis v. Chase National Bank, 314 U. S. 63, 86 L. Ed. 47 . . . . .	9
John Martin Riehle, Receiver v. Edward Margolies, 270 U. S. 218, 73 L. Ed. 669 . . . . .	6
Johnson v. Thomas, 16 Fed. Supp. 1019 . . . . .	8
Local Loan Co. v. Hunt, 292 U. S. 234, 78 L. Ed. 1230 . . . . .	6
McNutt v. General Motors Accept. Corp., 298 U. S. 178, 80 L. Ed. 1135 . . . . .	5
McNutt v. General Motors Accept. Corp., 298 U. S. 178, 80 L. Ed. 1135 . . . . .	8
Mitchell v. Maurer, 293 U. S. 237, 79 L. Ed. 338 . . . . .	5
New Orleans Land Co. v. Leader Realty Company, 255 U. S. 266, 65 L. Ed. 621 . . . . .	6
Norton v. Larney, 266 U. S. 511, 69 L. Ed. 413 . . . . .	5

	Page
Oklahoma v. Texas, 258 U. S. 574, 66 L. Ed. 771.....	6
Raphael v. Trask, 194 U. S. 272, 48 L. Ed. 973.....	5
Riverdale Cotton Mills v. Alabama & G. Mfg. Co., 198 U. S. 188, 49 L. Ed. 1008 .....	5
Smith v. Chase National Bank (8th Cir.), 141 Fed. (2d) 608 . . . . .	6
Smith v. McCullough, 270 U. S. 456, 70 L. Ed. 682.....	5
Volland, In re (7th Cir.), 83 Fed. (2d) 680.....	8
Warren v. Palmer, 310 U. S. 132, 84 L. Ed. 1118.....	6
White v. Ewing, 150 U. S. 36, 40 L. Ed. 67.....	6
28 U. S. C. A., Sec. 80 (Judicial Code, Sec. 37).....	8



In the Supreme Court of the United States

(OCTOBER, 1944, TERM)

---

No. 773

---

OILS, INC., an Oklahoma Corporation,  
*Petitioner,*

V E R S U S

G. T. BLANKENSHIP, ET AL.,  
*Respondents.*

---

**BRIEF OF RESPONDENTS G. T. BLANKENSHIP,  
DAISY O. BLANKENSHIP, LOU SHEPHERD, NA-  
TIONAL BOND AND MORTGAGE CO., ROYALTY  
HOLDING CO., OIL ROYALTIES, INC., AND EQUAL  
ROYALTY CO. IN OPPOSITION TO PETITION.**

---

**OPINIONS BELOW**

The judgment of the District Court dismissing the action without prejudice for want of jurisdiction is dated November 26, 1943 (R. 45). The opinion of the Circuit Court affirming is dated October 25, 1944 (R. 49-54), and is officially reported in 145 Fed. (2d), Advance Sheet No. 5, 354.

## **GENERAL STATEMENT**

### **Hopler Action, No. 461 Civil**

On May 23, 1940, A. P. Hopler, et al, as minority stockholders of the Farmers Mutual Royalty Syndicate, Inc., hereinafter referred to as "Farmers Mutual," commenced an action in the District Court of the United States for the Western District of Oklahoma, against said Farmers Mutual, Oils, Inc., a corporation the petitioner here, Farmers Royalty Holding Company, a corporation, National Bond and Mortgage Co., a corporation, Harry Culver, Victor M. Locke, Jr., Maynard L. McLain, Bert Shepherd, Gerald Shepherd, Roy Reynolds, Nina O. Thomas, and Culver & Shepherd, a co-partnership composed of Harry Culver and Bert Shepherd, being Cause No. 461 Civil, and hereinafter referred to as the "Hopler Case." The bill of complaint appears in the record at pages 20 to 29.

On September 29, 1941, findings of fact and conclusions of law were filed. The case was re-opened, additional evidence introduced, and on January 29, 1942, amended and additional findings of fact and conclusions of law were filed. The original, amended, and additional findings of fact and conclusions of law are not a part of this record.

On January 24, 1942, F. M. Petree was appointed receiver of the Farmers Mutual and the petitioner. This order is not a part of the record. On February 18, 1942, a decree was made and entered in said cause, copy of which appears in the record at pages 30 to 40. Said decree, as to the order appointing a receiver, contains this language:



"The order of the Court appointing F. M. Petree as Receiver of the Farmers Mutual Royalty Syndicate, Inc., and the Oils Incorporated is based upon the findings and conclusions and this Decree. And the order is hereby approved and re-entered as of this date" (R. 30).

In said decree money judgments were awarded in favor of the petitioner against four individual defendants (R. 31-33), and in favor of the Farmers Mutual against eight individual defendants (R. 30-33).

### **Instant Action**

On January 14, 1943, the instant action was brought by the Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation; and Oils, Inc., an Oklahoma corporation; both by their Receiver F. M. Petree, Plaintiffs, against the respondents here. A copy of the petition appears in the record at pages 1 to 14.

The respondent, National Bond and Mortgage Company, was a party defendant in the Hopler Case. With the exception of this concern none of the parties defendant in the Hopler case is a party defendant in the instant case. The Farmers Mutual and the petitioner were defendants in the Hopler case.

On January 18, 1943, an application was filed in the Hopler case to terminate the receivership. (R. 42-43). On March 15, 1943, an order was made terminating the re-

ceivership, discharging him, and returning the properties and assets of the Farmers Mutual and the petitioner to their respective Boards of Directors. (R. 44-45).

On July 23, 1943, an application was filed in the instant case to substitute parties (R. 15-16), and on July 26, 1943, a substitution order was made and entered (R. 17). This order, in part, provides:

"Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the petitioners be and are hereby premitted to designate as parties plaintiff-Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation; that the words 'both by the receiver, F. M. Petree' be stricken from the designation of the petitioners, and that said cause proceed with the substituted parties plaintiff" (R. 17).

Prior to the date of the above order the plaintiffs in the instant action were Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation; both by their Receiver F. M. Petree, and by virtue of this order the name of the receiver was eliminated and the plaintiffs became Farmers Mutual Royalty Syndicate, Inc., an Arizona corporation, and Oils, Inc., an Oklahoma corporation.

The defendants in the instant case, the respondents here on whose behalf this brief is presented, challenged the jurisdiction of the District Court over the subject-matter. (R. 14-15). The challenge was sustained and the action dismissed. (R. 45).

## ARGUMENT

### Point I.

**Jurisdiction, dependent or independent, must affirmatively appear from the allegations of the complaint.**

Jurisdiction, dependent or independent, must affirmatively and distinctly appear from the allegations of the complaint, and can not rest upon presumptions or argumentative inferences drawn therefrom.

—*Norton v. Larney*, 266 U. S. 511, 69 L. Ed. 413;

*Smith v. McCullough*, 270 U. S. 456, 70 L. Ed. 682;

*Mitchell v. Maurer*, 293 U. S. 237, 79 L. Ed. 338;

*McNutt v. General Motors Accept. Corp.*, 298 U. S. 178, 80 L. Ed. 1135.

### Point II.

**The instant action when brought was a new, independent one, and the district court was without jurisdiction over the subject-matter thereof. The Order of dismissal without prejudice was proper.**

The instant action when brought, as reflected by the complaint, was a new, independent one, and the District Court had no jurisdiction over the subject-matter thereof. The order of the District Court was proper, and the rule announced by the Circuit Court in affirming the judgment of the District Court is in harmony with the decisions of this Court and not in conflict therewith.

- Raphael v. Trask*, 194 U. S. 272, 48 L. Ed. 973;  
*Riverdale Cotton Mills v. Alabama & G. Mfg.*  
*Co.*, 198 U. S. 188, 49 L. Ed. 1008;  
*Hamer v. New York Railways Co.*, 244 U. S.  
206, 61 L. Ed. 1125;  
*New Orleans Land Co. v. Leader Realty Com-*  
*pany*, 255 U. S. 266, 65 L. Ed. 621;  
*Oklahoma v. Texas*, 258 U. S. 574, 66 L. Ed. 771;  
*Hoffman v. McClelland*, 264 U. S. 552, 68 L. Ed.  
845;  
*Fulton National Bank v. Hosier*, 267 U. S. 276,  
69 L. Ed. 609;  
*Central Union Trust Co. v. Anderson County*,  
268 U. S. 93, 69 L. Ed. 862;  
*Cincinnati, Indianapolis & Western R. R. Co.*,  
*v. Indianapolis Union R. Co.*, 270 U. S. 106,  
70 L. Ed. 490;  
*John Martin Riehle, Receiver v. Edward Mar-*  
*golies*, 270 U. S. 218, 73 L. Ed. 669;  
*Local Loan Co. v. Hunt*, 292 U. S. 234, 78 L.  
Ed. 1230;  
*Dugas v. American Surety Co.*, 300 U. S. 414,  
81 L. Ed. 720;  
*Warren v. Palmer*, 310 U. S. 132, 84 L. Ed. 1118;  
*White v. Ewing*, 150 U. S. 36, 40 L. Ed. 67;  
*Green-Boots Const. Co. v. Hays*, 56 Fed. (2d)  
829;  
*Cooperative Transit Co. v. West Penn. Electric*  
*Co. (4th Cir.)*, 132 Fed. (2d) 720;  
*Smith v. Chase National Bank (8th Cir.)*, 84  
Fed. (2d) 608;

*Campbell v. Golden Cycle Min. Co.* (8th Cir.),  
141 Fed. 610.

The receivership of the two corporations, the petitioner and the Farmers Mutual, over their respective properties was not brought about on account of the insolvency of either and was not a liquidating receivership. None of the parties defendant in the Hopler case are parties defendant in the instant case, except the National Bond and Mortgage Company. The decree in the Hopler case is not under fire or attack in the instant case, and no effort is made therein to aid, enjoin, restrain, regulate, avoid, explain, or enforce said judgment; or to enforce or adjudicate liens upon, or claims to, property in the custody of the Court in the Hopler case actually or constructively. The instant case has no direct relation to any property or assets of said corporations, or either of them, actually or constructively drawn into the Court's possession or control by the Hopler suit. The instant action has all of the earmarks of a new and independent action as distinguished from a dependent or ancillary one, and the following rule announced by the Circuit Court, to-wit:

"A controversy can not be regarded as ancillary so that jurisdiction can be made to depend upon jurisdiction in original suit, unless it has direct relation to property or assets actually or constructively drawn into the Court's possession or control by the principal suit."

is correct.

### Point III.

If the instant case was dependent when brought, the termination of the receivership, the discharge of the receiver, the return of the properties of the corporations to their respective boards of directors, their substitution and the elimination of the receiver from the action terminated the dependent jurisdiction, and the action became an independent one.

If the instant case was dependent when brought, the termination of the receivership, the discharge of the receiver, the return of the properties of the corporations to their respective Boards of Directors, their substitution and the elimination of the receiver from the action terminated the dependent jurisdiction, and the action became an independent one; and the decision of the Circuit Court of Appeals upon this phase of the question was proper and not in conflict with the decisions of this Court.

—28 U. S. C. A., Sec. 80 (Judicial Code, Sec. 37);

*Boston & Montana Consolidated Copper & Silver Min. Co. v. Montana Ore Purchasing Co.*, 186 U. S. 631, 47 L. Ed. 627;

*Cabaniss v. Reco Min. Co.* (5th Cir.), 116 Fed. 318;

*Johnson v. Thomas*, 16 Fed. Supp. 1019;

*In Re Volland* (7th Cir.), 83 Fed. (2d) 680;

*In Re Converse-Hough Co., Inc.* (D. C. N. Y.), 27 Fed. (2d) 368;

*Clauss v. Palmer Union Oil Co.* (9th Cir.), 222 Fed. 870;

*Barker v. Eastman* (1st Cir.), 206 Fed. 865;

*McNutt v. General Motors Accept. Corp.*, 298  
U. S. 178, 80 L. Ed. 1135;

*Indianapolis v. Chase National Bank*, 314 U. S.  
63, 86 L. Ed. 47.

### CONCLUSION

The opinion of the Circuit Court clearly and correctly states the situation as reflected by the record, and the rules of law therein announced are correct, in harmony with the decisions of this Court, not in conflict therewith, and the petition should be denied.

Respectfully submitted,

J. B. DUDLEY,  
1501 Apco Tower,  
Oklahoma City, Oklahoma,  
*Attorney for Respondents, G. T.  
Blankenship, Daisy O. Blanken-  
ship, Lou Shepherd, National Bond  
and Mortgage Co., Royalty Holding  
Co., Oil Royalties, Inc., and Equal  
Royalty Co.*

DUDLEY, DUVALL & DUDLEY,  
*Of Counsel.*

January, 1945.